



State of Utah

Department of  
Environmental Quality

Dianne R. Nielson, Ph.D.  
*Executive Director*

DIVISION OF ENVIRONMENTAL  
RESPONSE AND REMEDIATION  
Brad T Johnson  
*Director*

OLENE S. WALKER  
*Governor*

GAYLE F. McKEACHNIE  
*Lieutenant Governor*

ERRL-FORM-LTR

November 5, 2003

To Whom It May Concern:

In response to your inquiry concerning the liability of a landowner who purchases petroleum contaminated property after all Underground Storage Tanks (USTs) have been permanently closed (removed or closed in place), I have enclosed the Wells Rural administrative decision. As indicated in the Wells Rural decision, The Executive Secretary (UST) of the Utah Solid and Hazardous Waste Control Board has interpreted the Underground Storage Tank Act to exclude property owners (with no previous relationship to the facility) from the definitions of "owner" and "responsible party" when all USTs were permanently closed prior to the real property purchase.

In enforcing the Underground Storage Tank Act, the Executive Secretary (UST) has typically required the owner or operator of the tank at the time the tank was permanently closed to investigate, abate, and remediate any release. The Executive Secretary (UST) has not ordered a landowner, who innocently purchased the property after all of the USTs were permanently closed, to take corrective action. Nonetheless, it is conceivable that a landowner could ultimately be ordered to take corrective action depending upon the terms of the transaction. The landowner might also be responsible for corrective action if the landowner's development of the property contributes to the contamination.

Finally, where petroleum contamination continues to exist, other environmental laws may be applicable which would affix liability to the current landowner. For instance, if petroleum contamination becomes an imminent threat to public health and the environment, the landowner may be ordered to abate the source under the Hazardous Substance Mitigation Act. Also, if the contamination pollutes surface or groundwater, the landowner may have some responsibility under the Water Quality Act.

Sincerely,

Brad T Johnson, Executive Secretary (UST)  
Utah Solid and Hazardous Waste Control Board

BTJ/srb

Enclosure(s)



THE EXECUTIVE SECRETARY (UST) OF  
THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

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IN RE: WELLS RURAL ELECTRIC COMPANY	:	RECOMMENDED ORDER DETERMINING WELLS RURAL NOT RESPONSIBLE
	:	
		Fac. No. 8000120

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David McKnight, the appointed presiding officer in the above referenced matter received a motion dated October 5, 1993 by Wells Rural Electric Company for a determination that Wells Rural is not a responsible party. On November 1, 1993 the Division of Environmental Response and Remediation submitted a response to the Wells Rural motion asserting that Wells Rural must provide some documentation to support its Motion. On November 15, 1993, Wells Rural submitted copies of deeds, affidavits and other material to support its motion that it is not a responsible party. No other parties to this proceeding opposed Wells Rural's motion.

Concerning Wells Rural Electric Company's motion, the presiding officer makes the recommended findings and order to the Executive Secretary (UST) as follows:

1. Wells Rural Electric obtained the subject property (upon which petroleum contamination was later detected) from State Line Properties by warranty deed on November 17, 1988. Wells Rural submitted an affidavit of R.O. Peterson wherein he avers that records maintained by his company reveal that in the summer of 1980, his company removed three underground storage tanks (USTs) used in conjunction with a former Shell Oil gas station on the subject property. Wells-Rural also submitted an affidavit of Dave Shelton which states that Mr. Shelton removed from the subject property in July of 1988, four underground storage tanks used in conjunction with a former gas station referred to as an American Oil Company (Amoco) station. The only fact that appears in dispute is found in a letter dated November 19, 1992, which Stateline Properties wrote to the DERR asserting that the USTs associated with the Amoco station were removed prior to March of 1980. Nevertheless, no dispute exist that there were no known USTs containing petroleum or other regulated substances situated at the subject property when Wells Rural Electric Company obtained ownership of the property or at any time during Wells Rural's ownership of the subject property.

2. Utah Code Ann. § 19-6-402(23) includes as responsible parties any person with an ownership interest (excluding security interests) or title in underground storage tanks on a parcel of property (facility), or who operated or otherwise controlled activities at a facility at any time petroleum was contained in the facility. Since Wells Rural has shown that no underground storage tanks existed on the subject property during Wells Rural's ownership, there are no underground storage tanks or facility owned, operated or otherwise controlled by Wells Rural that

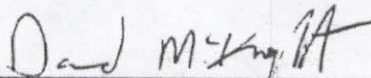


may have contributed to the contamination of the Wells Rural property. Accordingly, I recommend that Wells Rural Electric Company no longer be named and included in this proceeding as a potentially responsible party, but, be allowed to participate as an interested party. Further, Wells Rural requested that a determination be made that they are not a responsible party. I recommend that Wells Rural be deemed a non-responsible party in the above referenced matter.

#### NOTICE OF RIGHTS OF ADMINISTRATIVE REVIEW

In accordance with Utah Admin. Code R311-210-14, a copy of the recommended order is being distributed to all parties prior to the Executive Secretary (UST) acting upon it. The signing of this recommended order by the presiding officer is not a final order. Pursuant to R311-210-14, the presiding officer will submit this recommended order to the Executive Secretary (UST) for his consideration and action. Until the Executive Secretary (UST) issues the final order, parties have no right to seek administrative review from the Utah Solid and Hazardous Waste Control Board.

DATED this 3rd day of March, 1994.



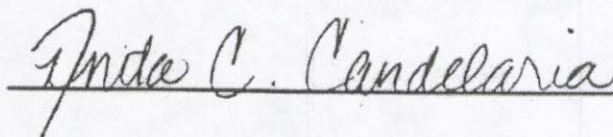
DAVID MCKNIGHT

Presiding Officer appointed by  
the Executive Secretary (UST)

#### CERTIFICATE OF HAND DELIVERY

I HEREBY CERTIFY that on this 4 day of March, 1994, I hand-delivered the original of the foregoing Recommended Order Determining Wells Rural Not Responsible to:

Kent P. Gray  
Executive Secretary (UST) of the  
Utah Solid and Hazardous Waste Control Board  
168 North 1950 West, First Floor  
Salt Lake City, Utah 84116





CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Recommended Order Determining Wells Rural Not Responsible, by U.S. Mail, postage prepaid on this 4 day of March, 1994 to the following:

Shell Oil Company  
C/O David Swope  
4887 One Shell Plaza  
P.O. Box 2463  
Houston, Texas 77252

State Line Hotel, Inc.  
C/O Larry Herron, General Manager  
P.O. Box 789  
Wendover, Utah 84083

Union Pacific Railroad Company  
C/O Dennis C. Farley  
406 West 100 South  
Salt Lake City, Utah 84101

Wells Rural Electric Company  
P.O. Box 365  
Wells, Nevada 89835

Al Park Petroleum, Inc.  
P.O. Box 2877  
Elko, Nevada 89801

Amoco Corporation  
C/O Dale M. Iwataki  
200 East Randolph Drive  
Post Office Box 87703  
Chicago, Illinois 60680-0703

Robert P. Hill  
Ray, Quinney & Nebeker  
79 South Main Street, Suite 400  
Salt Lake City, Utah 84145-0385

H. Michael Keller  
Van Cott, Bagley, Cornwall & McCarthy  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144

Doug Credille  
Attorney General's Office  
50 South Main Street, Suite 900  
Salt Lake City, Utah 84144

Ford G. Scalley  
Scalley & Reading  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111

Amato C. Candelaria

cc: Bryan Whitaker, Branch Manager  
Robin Jenkins, Site Manager



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BEFORE THE EXECUTIVE SECRETARY (UST) OF  
THE UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

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IN RE: WELLS RURAL ELECTRIC COMPANY : FINAL ORDER ON RECOMMENDED  
ORDER DETERMINING WELLS RURAL  
NOT RESPONSIBLE  
: Fac. No. 8000120

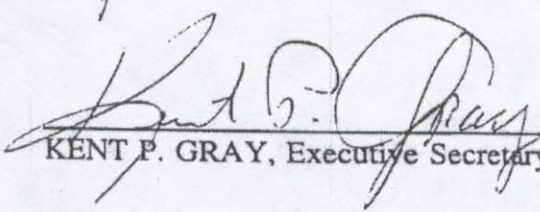
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ACTION AND ORDER OF THE EXECUTIVE SECRETARY (UST)

The Executive Secretary (UST) who appointed a presiding officer to consider the above referenced matter and received the presiding officer's recommended order determining Wells Rural Electric Company not a responsible party which was signed and dated March 3, 1994, hereby:

1. Adopts the order recommended by the presiding officer in its entirety and enters it as a final order.
2. The Executive Secretary's (UST) adopting the recommended order in its entirety, constitutes his final order concerning the issues the order addresses on this matter. Pursuant to Utah Code Ann. Sections 19-6-404(3) and 63-46b-12, parties wishing to seek agency review must file a written appeal to the Utah Solid and Hazardous Waste and Control Board, 168 North 1950 West, 1st Floor, Salt Lake City, Utah 84116, within thirty (30) days from the date of this final order following the procedures prescribed in Section 63-46b-12 of the Utah Administrative Procedures Act (UAPA). A party's failure to appeal to the Utah Solid and Hazardous Waste and Control Board waives the party's right to seek judicial review of the final order.
3. As provided in Utah Ann. § 63-46b-13, the parties to this matter have no right to request reconsideration since agency review is available.

DATED this 5<sup>th</sup> day, of April, 1994.

  
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KENT P. GRAY, Executive Secretary (UST)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5<sup>th</sup> day of April, 1994, I mailed a true and correct copy of the foregoing Final Order on Recommended Order Determining Wells Rural not Responsible, postage prepaid, to:

Shell Oil Company  
C/O David Swope  
4887 One Shell Plaza  
P.O. Box 2463  
Houston, Texas 77252

State Line Hotel, Inc.  
C/O Larry Herron, General Manager  
P.O. Box 789  
Wendover, Utah 84083

Union Pacific Railroad Company  
C/O Dennis C. Farley  
406 West 100 South  
Salt Lake City, Utah 84101

Wells Rural Electric Company  
P.O. Box 365  
Wells, Nevada 89835

Al Park Petroleum, Inc.  
P.O. Box 2877  
Elko, Nevada 89801

Amoco Corporation  
C/O Dale M. Iwataki  
200 East Randolph Drive  
Post Office Box 87703  
Chicago, Illinois 60680-0703

Robert P. Hill  
Ray, Quinney & Nebeker  
79 South Main Street, Suite 400  
Salt Lake City, Utah 84145-0385

H. Michael Keller  
Van Cott, Bagley, Cornwall & McCarthy  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144



Doug Credille  
Attorney General's Office  
50 South Main Street, Suite 900  
Salt Lake City, Utah 84144

Ford G. Scalley  
Scalley & Reading  
261 East 300 South, Suite 200  
Salt Lake City, Utah 84111

Arlene Lovato

cc: Bryan Whitaker, Branch Manager  
Robin Jenkins, Site Manager